

**No. 10621**

**IN THE**

**United States Circuit Court of Appeals**

**FOR THE NINTH CIRCUIT**

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**A. M. PEARSON,**

**Appellant,**

**vs.**

**UNITED STATES OF AMERICA,**

**Appellee.**

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**TRANSCRIPT OF RECORD**

**Upon Appeal from the District Court of the United States  
for the Southern District of California,  
Central Division**

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**FILED**

**AUG 16 1944**

**PAUL P. O'BRIEN,  
CLERK**



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italics; and likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS:

For Appellant:

Lee J. Myers,  
608 S. Hill St.  
Los Angeles 14, Calif.

For Appellee:

Charles H. Carr, United States Attorney,  
Ernest A. Tolin, Assistant United States Attorney,  
600 U. S. Post Office and Court House Bldg.  
Los Angeles 12, Calif. [1\*]

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\*Page number appearing at foot of certified transcript of record.

In the District Court of the United States, Southern  
District of California, Central Division.

No. 16149

UNITED STATES OF AMERICA,

Plaintiff,

vs.

A. M. PEARSON,

Defendant.

### INFORMATION.

Comes now Charles H. Carr, United States Attorney in and for the Southern District of Columbia, Central Division, who for the United States and in its behalf, prosecutes in his own proper person, and with leave of Court first had and obtained, gives the Court here to understand and be informed as follows, to-wit: \* \* \* [3]

### COUNT SIX.

[N.E.W. ord. ent. 11/18/43] March

That on or about the 31st day of ~~October~~, 1943, in the City of Los Angeles, County of Los Angeles, State of California, in the District aforesaid and in the Central Division thereof, and within the jurisdiction of this Court, A. M. Pearson did knowingly, wilfully, and unlawfully sell and supply to Lieutenant D. M. Johnson, an individual, service on a certain R. C. A. radio, No. 196679, for the sum of \$6.45; that the sale of said service on the R. C. A. radio at \$6.45 was in excess of the maximum price per-

mitted by Maximum Price Regulation No. 165, as amended, and in violation of Maximum Price Regulation No. 165, as amended (Maximum Price Regulation No. 165, 7 Fed. Reg. 4734; amended, 7 Fed. Reg. 5028, 8 Fed. Reg. 4782, 8 Fed. Reg. 5681; 8 Fed. Reg. 5755, 8 Fed. Reg. 5933, 8 Fed. Reg. 5806) issued by Leon Henderson, as Administrator of the Office of Price Administration, pursuant to Section 2 of the Emergency Price Control Act of 1942 (Emergency Price Control Act of 1942, Pub. L. 421, 77th Cong., 2d Sess., 56 Stat. 23, January 30, 1942); contrary to the form and effect of the statute in such case made and provided and against the peace and dignity of the United States of America.

\* \* \* \* \*

[7]

CHARLES H. CARR,

United States Attorney

By RONALD ABERNETHY,

Assistant United States Attorney.

[Verified]

[Endorsed]: Filed Aug. 11, 1943. [11]

At a stated term, to-wit: The February Term, A. D. 1943, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday the 23rd day of August in the year of our Lord one thousand nine hundred and forty-three.

Present:

The Honorable Ben Harrison, District Judge.

No. 16,149-Crim.

United States of America,

Plaintiff,

vs.

A. M. Pearson,

Defendant.

This cause coming on for arraignment and plea of the defendant A. M. Pearson; Ray H. Kinnison, Esq., Assistant U. S. Attorney, appearing for the Government; Lee J. Myers, Esq., appearing as counsel for the defendant; H. A. Dewing, Court Reporter, being present and reporting the proceedings; the defendant, being present in Court on his own recognizance, now states his true name to be as charged in the Information and enters plea of not guilty to all counts of the Information. It is ordered that this cause be, and it hereby is, continued to September 13, 1943, at 10 a. m. before Judge Beaumont for setting for trial. [12]

In the United States District Court, Southern District  
of California, Central Division.

No. 16149-Crim.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

A. M. PEARSON,

Defendant.

### VERDICT.

We, the Jury in the above-entitled cause, find the defendant, A. M. Pearson, not guilty as charged in count one of the Information, not guilty as charged in count four of the Information, not guilty as charged in count five of the Information, guilty as charged in count six of the Information, not guilty as charged in count ten of the Information, and not guilty as charged in count eleven of the Information.

Dated: Los Angeles, California, November 18, 1943.

DELMAR L. TRUE

Foreman.

[Endorsed]: Filed Nov. 18, 1943. [22]

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[Title of District Court and Cause.]

### MOTION FOR NEW TRIAL.

Now comes the defendant, A. M. Pearson, and moves the Court to set aside the verdict of the jury returned in the above entitled action on November 18th, 1943, and to grant a new trial on Count VI of the Information on the following grounds, to wit:

1. The verdict is contrary to law.

2. The evidence was insufficient to justify the verdict in that there was no substantial evidence to show that the Defendant did any work upon the radio of D. M. Johnson, or that he had any personal knowledge as to the amount of work which had been done upon it; that the complainant Johnson testified that the radio was delivered to an employee who made out an order which Johnson signed and which is in evidence; the undisputed evidence of the defendant was that he did no work upon the radio and made up a bill based upon time reports turned into him by the employee, which time was charged at rates listed with the office of Price Administration.

3. Count VI of the Information does not state facts sufficient to constitute the crime charged.

4. Count VI of the Information does not charge a crime under the laws of the United States.

5. The Court erred in refusing to direct a verdict of *acquittal* on Count VI at the conclusion of the Government's case to which refusal the defendant excepted.

6. The Court erred in the instruction given to the jury after the jury had retired to deliberate upon the verdict and returned into Court [23] and requested further instructions, to which the defendant excepted.

7. The Court erred in refusing to give defendant's requested Instruction Number 10.

Dated this 20th day of November, 1943.

LEE J. MYERS

Attorney for Defendant.

POINTS AND AUTHORITIES.

1. The United States District Courts may grant a new trial in all cases.

U. S. Statutes Title 28, Sec. 391.

2. In passing upon a motion for new trial it is the duty of the Judge to weigh the evidence.

Big Brush Coal Co. v. Williams, 176 Fed. 529

Lake Erie & W. R. Co. v. Schneider, 257 Fed. 675

3. New trials are granted where the Court erred in stating the law, or where the verdict of the jury has no evidence to sustain it, or where the great preponderance of the evidence is against the verdict.

Pringle v. Guild, 119 Fed. 962

4. A judgment of conviction cannot be sustained if the indictment fails to state facts sufficient to constitute the crime charged, though there was no demurrer, motion to quash, demand for Bill of Particulars, motion for a new trial or in arrest of judgment; and no specific exception to any instruction and only a general exception to a refusal to instruct.

Somenberg v. U. S., 264 Fed. 327

5. The Government must prove beyond a reasonable doubt that the alleged violation was "wilful," and there must be a "conscious" violation.

U. S. v. Slobodkin, 48 Fed. Supp. 913.

Respectfully submitted,

LEE J. MYERS

Attorney for Defendant. [24]

Received copy of the within this 22d day of November, 1943.

CHARLES H. CARR

Attorney for Plaintiff, HM

[Endorsed]: Filed Nov. 22, 1943. [25]

At a stated term, to-wit: The September Term, A. D. 1943, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday the 22nd day of November in the year of our Lord one thousand nine hundred and forty-three.

Present:

The Honorable Ben Harrison, District Judge.

No. 16,149-Crim.

United States of America,

Plaintiff,

vs.

A. M. Pearson,

Defendant.

This cause coming on for hearing on motion of defendant for new trial, filed November 22, 1943, and for sentence of the defendant A. M. Pearson on count 6 of the Information herein; E. A. Tolin, Esq., Assistant U. S. Attorney, appearing for the Government; Lee J. Myers, Esq., appearing as counsel for the defendant; Myrtle Bennalack, Court Reporter, being present and reporting the proceedings; the defendant being present in Court on his own recognizance.

Attorney Myers states motion for new trial and grounds in support thereof; Attorney Tolin makes a statement on behalf of the Government; the Court orders motion of defendant for new trial denied, makes a statement and pronounces judgment against the defendant as follows:

\* \* \* \* \* [26]



[Title of District Court and Cause.]

## JUDGMENT AND COMMITMENT

Criminal. Information in Eleven counts for violation of Emergency Price Control Act of 1942.

On this 22nd day of November, 1943, came the United States Attorney, and the defendant A. M. Pearson appearing in proper person, and by his attorney, Lee J. Myers, Esq., and

The defendant having been convicted on verdict of guilty of the offense charged in the Information in the above-entitled cause, to wit: count six;-did knowingly, wilfully, and unlawfully sell and supply to a certain individual service on a certain R.C.A. radio, etc., for the sum of \$6.45; that the sale of said service was in excess of the maximum price permitted by the Maximum Price Regulation No. 165, as amended, etc., pursuant to Section 2 of the Emergency Price Control Act of 1942; as more fully set forth in count six of the Information herein; and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offenses, is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for the period of six (6) months in a county jail and pay a fine unto the United States of America in the sum of Five (\$500.) hundred dollars; and it is further ordered that said jail term is suspended upon the payment of said fine for the period of two years upon condition that in the future the defendant shall comply with the laws of the United States, State,

County and City in which he resides, and that said defendant be further imprisoned until payment of said fine, or until said defendant is otherwise discharged as provided by law.

It Is Further Ordered that execution is stayed for the period of five days.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

(Signed) BEN HARRISON

United States District Judge.

[Endorsed]: Filed Nov. 22, 1943. [27]

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[Title of District Court and Cause.]

#### NOTICE OF APPEAL.

Name and Address of Appellant: A. M. Pearson, 5120 West Adams Boulevard, Los Angeles, California.

Name and Address of Appellant's Attorney: Lee J. Myers, 608 South Hill Street, Los Angeles, California.

Offense: Violation of the Maximum Price Regulation No. 165, as amended, and in violation of Maximum Price Regulation No. 165, as amended, (Maximum Price Regulation No. 165, 7 Fed. Reg. 4734; amended, 7 Fed. Reg. 5028, 8 Fed. Reg. 4782, 8 Fed. Reg. 5681, 8 Fed. Reg. 5755, 8 Fed. Reg. 5933, 8 Fed. Reg. 5806.) issued by Leon

Henderson, as administrator of the Office of Price Administration, pursuant to Section 2 of the Emergency Price Control Act of 1942, (Emergency Price Control Act of 1942, Pub. L. 421, 77 Cong., 2nd Sess., 56 Stat. 23, January 30, 1942,) contrary to the form and effect of the statute in such case made and provided and against the peace and dignity of the United States of America (count 6 of the information).

Date of Judgment: November 22, 1943.

Description of Judgment and Sentence: \$500.00 fine and 6 months in County Jail and suspended upon condition that fine is paid, and two years probation; 5 day stay of imprisonment.

I, the above named appellant, hereby appeal to the United States Circuit Court of *Appeal* for the Ninth Circuit from the judgment on the grounds hereinafter set forth.

Notice is hereby given, pursuant to Rule V, that I do not elect to pay the fine imposed, nor elect to enter upon the service of the sentence [28] pending appeal, but will, in lieu thereof, deposit, with permission of the Court, with the Clerk of the Court the fine so imposed, conditioned upon the outcome of this appeal.

Dated: November 26, 1943.

A. M. PEARSON

Appellant

LEE J. MYERS

Attorney for Appellant.

## GROUNDS OF APPEAL

## I.

That count VI of said information fails to state a public offense against the laws of the United States.

## II.

That there is no reasonable or probable cause upon which the information was based.

## III.

That said verdict and finding of guilt is contrary to the evidence adduced at the trial of said cause.

## IV.

That the evidence is insufficient to support the verdict; the verdict is contrary to the law and the evidence.

## V.

That the Court should have granted the motion for a directed verdict at the close of the Government's case.

## VI.

That the Court erred in rulings made throughout the trial of the case and at the close of the case, and in its order over-ruling the motion for a new trial.

## VII.

That the Court erred in admitting into evidence and permitted to be considered by the jury evidence tending to show the commission of offenses other than those set forth in the information upon which the defendant was tried. [29]

## VIII.

That the Court erred in instructions given, particularly on the question of violation of law created by executive order.

## IX.

That the Court was guilty of gross mis-conduct in reprimanding the jury when it announced its inability to agree upon a verdict and that they were dead-locked; that the order of the Court for the jury to return to their jury-room and as reasonable men to agree, otherwise they would be locked up for the night, was highly prejudicial to the rights of the Defendant.

## X.

That the Court erred in its rulings that a violation of the Maximum Price Regulation No. 165, as amended, constituted a violation of Section 2 of the Emergency Price Control Act of 1942, Pub. L. 421, 77th Cong., 2nd Sess., 56 Stat. 23, January 30, 1942.

LEE J. MYERS

Attorney for Appellant.

Received copy of the within Notice of Appeal this 26 day of November, 1943. Attorney for Plaintiff,

CHARLES H. CARR. I.J.

U. S. Attorney.

[Endorsed]: Filed Nov. 26, 1943. [30]

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[Title of District Court and Cause.]

## ORDER.

Upon motion of the Defendant's attorney, and good cause appearing:

It is hereby ordered that the Defendant, A. M. Pearson, be released on his own recognizance pending the decision upon appeal in the above entitled action, upon depositing the sum of Five Hundred (500) Dollars, in cash, in the Registry of the United States District Court,

Southern District of California, Central Division, and upon filing a supersedeas bond in connection with said cash deposit.

Done this 27th day of November, 1943.

BEN HARRISON

Judge of the United States District Court.

Approved as to Form:

CHARLES H. CARR

U. S. Atty

By James M. Carter

Asst U. S. Atty

Received copy of the within Order this 27th day of November, 1943.

CHARLES H. CARR, I.J.

Attorney for Plaintiff.

[Endorsed]: Filed Nov. 27, 1943. [31]

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[Title of District Court and Cause.]

SUPERSEDEAS BOND.

Know All Men by These Presents:

That I, A. M. Pearson, of the City of Los Angeles, State of California, as principal am held firmly bound unto the United States of America in the sum of Five Hundred (500) Dollars for the payment of which said sum I bind myself, my heirs, executors, administrators and assigns. The condition of the foregoing obligation is as follows:

Whereas, heretofore, to wit, on the 22nd day of November, 1943, at a term of the District Court of the United States, in and for the Southern District of California, Central Division, in an action pending in said

Court in which the United States of America was Plaintiff and A. M. Pearson was Defendant, a Judgment and sentence was made, given, rendered and entered against the said A. M. Pearson in the above entitled action, whereas he was convicted as charged on count VI of the Information; and

Whereas, in said judgment and sentence, so made, given, rendered and entered against said A. M. Pearson he was by said judgment sentenced to pay a fine of Five Hundred (500) Dollars and six (6) months in the County Jail, which jail sentence was suspended upon the condition that the fine be paid, and the Defendant placed on two (2) years probation; and

Whereas, the said A. M. Pearson has filed a Notice of Appeal from the said conviction and from the said judgment and sentence, and from the fine imposed, appealing to the United States Circuit Court of Appeals for the Ninth Circuit; and

Whereas, the said A. M. Pearson has been released on his own recognizance pending the decision upon said appeal and has deposited the sum [32] of Five Hundred (500) Dollars cash, in the Registry of the United States District Court, Southern District of California, Central Division.

Now Therefore, the condition of the above obligation is such that if the said Defendant, A. M. Pearson, shall prosecute said appeal to effect, and shall pay said fine of Five Hundred (500) Dollars, if for any reason the appeal is dismissed, or if the said judgment is affirmed, then the above obligation is to be void, otherwise to remain in full force and virtue.

A. M. PEARSON

Principal



State of California

County of Los Angeles—ss.

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared A. M. Pearson, known to me to be the person who signed the foregoing instrument and who acknowledged to me that he executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal at Los Angeles, California, this 27th day of November, 1943.

(Seal)

FRANK L. STEARNS

Notary Public

Approved as to Form

CHARLES H. CARR

Charles H. Carr

United States Attorney

By JAMES M. CARTER

Assistant United States Attorney

I hereby certify that I have examined the within bond and that in my opinion the form hereof is correct and surety thereon is qualified.

LEE J. MYERS

Attorney for Defendant and Appellant

The foregoing bond is approved this 27th day of Nov. 1943.

BEN HARRISON

United States District Judge.

Received copy of the within *Supersedas* Bond this 27th day of November, 1943.

CHARLES H. CARR, 1J

US Atty, Attorney for Plaintiff.

[Endorsed]: Filed Nov. 27, 1943. [33]



[Title of District Court and Cause.]

ORDER EXTENDING TIME WITHIN WHICH TO  
SETTLE BILL OF EXCEPTIONS AND FILE  
ASSIGNMENT OF ERRORS.

Upon reading and filing the Stipulation of Counsel for Plaintiff and Appellee, and Counsel for Defendant and Appellant, A. M. Pearson, and it also otherwise appearing to the Court that there is good cause therefore;

It Is Hereby Ordered tha the time within which the Bill of Exceptions can, in the above entitled action on behalf of the Appellant, be settled, is extended to and including the 15th day of January, 1944; and

It Is Further Ordered That the Defendant and Appellant may file his Assignment of Errors and proposed Bill of Exceptions on or before the 15th day of January, 1944; and

It Is Further Ordered that the plaintiff and Appellee may file its proposed Amendments, if any, to said Bill of Exceptions on or before the 25 day of January, 1944.

Dated this 23 day of December, 1943.

BEN HARRISON .

United States District Judge.

[Endorsed]: Filed Dec. 23, 1943. [35]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK.

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 36 inclusive contain full, true and correct copies of: Minute Order Entered August 11, 1943; Information; Minute Orders Entered August 23, 1943, November 17, 1943 and November 18, 1943 respectively; Verdict; Motion for New Trial; Minute Order Entered November 22, 1943; Judgment and Commitment; Notice of Appeal; Order re Supersedeas Bond; Supersedeas Bond; Stipulation Extending Time to Settle Bill of Exceptions; Order Extending Time to Settle Bill of Exceptions and Praecipe which, together with Original Bill of Exceptions, Assignment of Errors and Exhibits, transmitted herewith, constitute the record on appeal to the Circuit Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing, comparing, correcting and certifying the foregoing record amount to \$15.50 which sum has been paid to me by appellant.

Witness my hand and seal of said District Court this 11 day of May, 1944.

[Seal]

EDMUND L. SMITH,

Clerk

By Theodore Hocke

Theodore Hocke,

Deputy Clerk.

[Title of District Court and Cause.]

### ASSIGNMENT OF ERRORS.

The Aggrieved, by the decision, determination, judgment and proceedings had in the District Court of the United States, Southern District of California, Central Division, A. M. Pearson, Defendant and Appellant herein assigns the following errors in the proceedings, trial and judgment against him which he avers occurred during the trial of the case and constitute errors and each of them are to the great detriment, prejudice and injury of the Defendant and Appellant and in violation of the rights conferred upon him by the Constitution and Statutes of the United States of America. Said errors are as follows:

#### I.

The District Court of the United States erred in denying Defendant's and Appellant's motion for a directed verdict of acquittal on Count VI of the Information at the conclusion of the Government's case.

#### II.

The District Court of the United States erred in its ruling that a violation of Maximum Price Regulation No. 165, issued by Leon Henderson, as administrator of the Office of Price Administration constituted a public offense.

#### III.

That Count VI of the Information fails to state a public offense against the laws of the United States.

## IV.

That the verdict and finding of guilt on Count VI of the Information is contrary to and is not sustained by the evidence adduced at the trial of said cause.

## V.

That the verdict is contrary to law.

## VI.

That the District Court erred in overruling Defendant's and Appellant's Motion for a New Trial.

## VII.

That the evidence is insufficient to support the verdict.

## VIII.

That the District Court of the United States erred in denying Defendant's and Appellant's Motion for a directed verdict of acquittal on Count VI of the Information, at the conclusion of all the evidence.

Each and all of said errors were duly and regularly excepted to by the Defendant and Appellant, and for which errors the Appellant prays for a reversal of the judgment.

LEE J. MYERS

Attorney for Defendant and Appellant.

Filed Jan. 14, 1944.

[Endorsed]: Filed May 13, 1944. Paul P. O'Brien, clerk.

[Title of District Court and Cause.]

### BILL OF EXCEPTIONS.

Be It Remembered, that on the 11th day of August, 1943, came the Plaintiff, the United States of America, into this Court and, with the permission of the Court, filed a certain Information against the Defendant.

To said Information the Defendant pleaded "Not Guilty, and thereupon issue was joined between them, and afterwards, to-wit, on the 17th day of November, 1943, the aforesaid issue between said parties came on regularly for trial before Honorable Ben Harrison, Judge of the United States District Court for the Southern District of California, Central Division, sitting with a jury, duly and regularly empaneled and sworn.

Plaintiff appeared by Charles H. Carr, United States Attorney, and Ernest A. Tolin, Assistant United States Attorney, and the Defendant, A. M. Pearson, appeared in person and by Lee J. Myers, his attorney.

The jury having been duly and regularly empaneled and sworn to try said cause, as aforesaid, the following proceedings, and none other, were had on [1]\* the Information, and the following evidence, both oral and documentary, and none other was received.

Plaintiff offered in evidence a letter dated July 25th, 1942, written by the Defendant, A. M. Pearson, to the Office of Price Administration, Los Angeles, California, listing his prices for services on radio repairs as of March 1942. Said letter was received in evidence by stipulation as Plaintiff's Exhibit 1. It was then stipulated that said Exhibit 1 constituted Defendant's listing

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\*Page number appearing at foot of Bill of Exceptions.

[Testimony of Mary E. Galton.]

of his prices with his War Price and Rationing Board as required by General Maximum Price Regulation in force at all times pertinent to this action. Thereupon

MARY E. GALTON

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Tolin:

My name is Mary E. Galton. In the course of my work I have used the name Mary Hammond. I am a policewoman of the City of Los Angeles attached to the bunco detail detective bureau and was so employed on the 30th day of March, 1943. On the 31st of March, 1943, I had dealings with the defendant, A. M. Pearson. I entered his place of business, a store located at 5120 West Adams Boulevard. Only the defendant was present in close enough proximity to hear the conversation. I had with me a portable Zenith radio which I placed on the counter. The defendant approached me and asked me what he could do for me. I asked him if he [2] could fix this radio. He asked me what was wrong with it. I said, "one thing I knew, the batteries did not work; that I was not interested in having that fixed, but it did not work, and I would like to have him repair it. So he pointed to his left to a number of radios on the floor and said he had those to do and asked me if I would call in a few hours and by that time he would have gone through these and my radio and determined the cause of the trouble. He asked me if I had ever had it fixed before. He asked me my name, I gave him the name of Mary

[Testimony of Mary E. Galton.]

Hammond. Then he gave me a little piece of paper and had me sign it and I left. I called him two or three times and finally on the next day I had a telephone conversation in which he said, "You can have that radio in a couple of days." He said the power supply was out. He said, "You are very fortunate I happened to have the agency in town for that particular part of your radio, otherwise I think you would have a great deal of trouble in replacing it. He said it would be \$5.75. I asked him when I could obtain the radio and he said in a day or so, to call him back. I believe it was the 5th he told me it was ready. I entered his office and asked him how much it was and he said it was \$5.75 as he had stated and I paid him. He gave me a statement at that time which I recognize as Government's Exhibit No. 7, for identification. I paid him the amount shown thereon, \$5.75.

Said Government's Exhibit No. 7, for identification, was then offered and received in evidence as Government's Exhibit No. 7. [3] I obtained the radio I took to Mr. Pearson in Room 51 of the City Hall from Captain Lorensen. I obtained it approximately fifteen minutes before I took it to Mr. Pearson's shop. Captain Lorensen gave it to me, then he drove me out to Mr. Pearson's shop. He parked around the corner and I took the radio and went into the shop.

### Cross-Examination

By Mr. Myers

I recognize Defendant's Exhibit No. B. The signature, Mary Hammond thereon is my signature. That is the paper I signed when I left my radio with Mr.



[Testimony of Mary E. Galton.]

Pearson. When I took my radio into Mr. Pearson he said, "What seems to be wrong?" I said, "I do not know, except that the batteries are weak and I don't want them replaced." I said, "It does not play." I did not tell him I wanted it put into first-class condition. I stated I wanted it repaired, that I would call in the evening and find out what was wrong. The radio was there five days. I do not know of my own knowledge whether there was a new tube put in the radio while it was at Mr. Pearson's. I do not know from my own investigation of the radio what parts were put in the radio or how much time Mr. Pearson spent on the repair. I don't recall that he mentioned that the rectifier tube was burned out. No mention was made of a rectifier tube that I recall, I had been told before I took the radio in there that a tube was burned out. I did not tell Mr. Pearson that. Tr. 12-19

Insert:

By Mr. Tolin:

For the purpose of correcting a typographical error in the Information, the Government moves to strike the word "October" from Line 3 of Count 6 of the Information on Page 7 thereof, and to insert instead the word "March". [4]

By Mr. Myers: Objected to as changing the cause of action.

The Court: I will allow evidence as to Count Six and require the Government to cite any authorities to show that it is proper to amend the Information in that way.

By Mr. Myers: Exception.

The Court: You make have an exception.



[Testimony of Harry M. Lorensen.]

Thereupon

HARRY M. LORENSON

was called and sworn as a witness on behalf of the Plaintiff and testified as follows:

Direct Examination

By Mr. Tolin:

I am a police officer of the City of Los Angeles and was on the 30th day of March, 1943. I have no direct connection with the Office of Price Administration. I know B. M. Johnson and Charles M. Barrett. On the 30th of March, 1943, I delivered a radio to Mary Galton. It was a Zenith portable. This took place in Room 51 of the City Hall. I afterward accompanied her to the Sky Pilot Radio Company, 5120 West Adams. I saw her take the radio into the Sky Pilot Radio Shop. I did not go with her. Prior to that I had taken that radio to the Standard Radio Company, 1355 South Flower Street. I did that shortly afterward on the 30th of March. I believe I delivered it to Mr. Kramer. At that time we checked all the tubes and played the radio on all stations, marked all the parts that could be replaced on the radio. We then put in a defective 117-Z 6 G tube. I then took the set back to Room 51 of the City Hall. That was done prior to the time I gave the set to Mary Galton. I saw the set again on the 5th of April when I took Mary Galton out to the Sky Radio [5] Company. She went into the repair shop and came out with the radio. I then went back to the Standard Radio shop where the set was checked over by Mr. Kramer and myself and we found that one tube had been replaced.

[Testimony of Harry M. Lorenson.]

When I first checked I marked every part in the radio. When I received the radio again from Mary Galton on the 5th of April I looked to see whether those parts were still there. All of them were in the same condition with the exception of the one tube that had been replaced. I checked all the connections that might have been soldered, all of them were there with their original solder, none of them had been replaced or worked on.

Mr. Myers: I ask the latter part of the answer be stricken out as a conclusion; on the further ground that this witness has not qualified himself as an expert to determine the condition of radios.

The Court: How do you know it was a good tube?

A. I saw it on the tester, when Mr. Barrett tested it. I saw it in the set, and saw the set play on all stations with that tube in it.

The Court: Objection overruled.

Mr. Myers: Exception.

Q. By Mr. Tolin: Did you make any observation of the radio at that time?

A. I checked all the parts that I had marked, and found that the identifications marks were on all of them, and that none of them had been replaced.

Q. Was this checking you have just testified about before or after the radio had been received from the Sky Pilot Radio Company?

A. Before and after. We also noted that the set was still covered with dust. This set had been in my bedroom for many months prior to my taking it down to the Sky Pilot Radio Company. It was littered with dust, and the dust was still there when I received [6] it

[Testimony of Harry M. Lorenson.]

back from the Sky Pilot Radio Company. The dust was cleaned off by air by Mr. Barrett.

Q. What time?

A. During the time we checked it, after receiving it back from the Sky Pilot Radio Company. As nearly as I can recall it the tube I put in the Zenith portable, the defective tube was a 117 Z 6 G. It was a Zenith type tube. I was told it was a rectifier tube. I am not a radio technician. I have had very little experience in the repair of radios. The tube was tested by Mr. Kramer. I had put a defective tube in the set. When I saw the radio after Miss Gaiton had got it back from the Sky Pilot everything was in the same condition as I originally saw it, except that a new tube had been put in to replace the defective rectifier tube which I had put in there purposely. This set (counsel at this point indicated a radio which was on the counsel table in the Courtroom) is a R. C. A. On the 30th day of March, 1943, I took my own R. C. A. radio, the one on the table there, to the Meyberg Co., 2200 Figueroa Street, where Mr. Barrett, Arthur Sheets and myself checked the radio. Mr. Barrett tested all of the tubes. I marked all the parts that might be removed. We played the radio on all stations, then took a No. 80 tube out and damaged it to the extent it would not play. We put the damaged tube back in the radio and checked it. It did not play. I then took the radio to Room 51 of the City Hall. The following day I turned the radio over to Lieut. Johnson about four o'clock on the 31st. On April 6th I accompanied Lieut. Johnson to the Sky Pilot Radio Company. He came out of the Sky Pilot Radio Com-

[Testimony of Harry M. Lorenson-B. M. Johnson.]  
pany about one o'clock and gave me the radio. Officer Sheets and myself then took it to the Meyberg Company, 2200 Figueroa [7] Street, where Mr. Barrett and myself checked the set and found that two tubes had been replaced, the one tube that had been damaged and one tube that was in good condition when we brought the set in.

### Cross Examination

By Mr. Myers:

When we got the set back everything was the same except there were two tubes—new tubes—in the set. The tube which we purposely blew out was a No. 80 and which I was told was a rectifier tube. This tube had been replaced when I got it back from the Sky Pilot Radio Company. There was also another new tube in the set. Otherwise, the set was identical with the condition in which it went to the Sky Pilot Radio Company. I had owned this set two or three years. I bought it second hand. I do not know how old the set is. I had never replaced any tubes in the set since I owned it and I do not know how old the tubes were that were in the set.

Thereupon

B. M. JOHNSON

was called and sworn as a witness on behalf of the Plaintiff and testified as follows:

By Mr. Tolin:

I am a Detective Lieutenant in the Los Angeles Police Department, and was during March 1943. On April 6th, 1943, I had a conversation with the Defendant, A. M. Pearson at the Sky Pilot Radio Shop. Mr. Pearson,

[Testimony of B. M. Johnson.]

some lady and myself were present. I told him I had come for my radio. He told me that he had found two tubes defective and that there was trouble in the oscillating circuit and he had to replace them. I did not say anything. I paid the bill [8] he presented. I had obtained the radio from Captain Lorensen on March 31st at the City Hall, room 55. I immediately took it to the Sky Pilot Radio Company on West Adams Boulevard. After arriving there Mr. Pearson was busy with a woman. I set the radio on the counter and another chap came from the back. He asked me if I wanted my radio repaired and what was the matter with it. I told him there was a tube blown out. Mr. Pearson was within a couple of feet of me. I simply told the other party there was a tube blown out in the radio and I would like it fixed. He said "All right" and gave me a slip. Mr. Pearson was still there. I asked when I could pick up the set and he said it would be two or three days as he had a lot of work there. Nothing was said about making repairs. Exhibit 8 is the bill that was given to me when I got the radio. I paid the amount of it, \$6.45. Immediately upon receiving the radio, I took it out and gave it to Captain Lorensen.

Exhibit 8 Was Received in Evidence.

### Cross Examination

By Mr. Myers:

I had no conversation with Mr. Pearson when I took the radio to the store. I apparently talked with one of his employees. He asked me what was wrong with the radio, and I told him there was a defective tube. I did not tell him which one. I knew a tube had been de-

[Testimony of B. M. Johnson.]

liberately destroyed, but I did not know which one. The employee asked me to sign an order and I signed one. Defendant's Exhibit "C" bears my signature and it is the order I signed when I took the radio to the store. I do not recall the word "Repair" being on it at the time I signed it.

Said Defendant's Exhibit "C" was received in evidence.

When I went to get the radio I saw Mr. Pearson. There was no conversation as to my identity or when the radio came in. After a great deal of looking around he found the bill. The woman was trying to help him. In a few [9] minutes he found it. He did not tell me he had done no work on the radio. He said he was sorry that it had taken him so long to fix the radio; that he had to fix it himself and worked until ten o'clock the night previous. I am not a radio technician and have no personal knowledge as to how much time either Mr. Pearson or his employee spent in locating the tube.

#### Direct Examination

By Mr. Tolin:

Referring to Defendant's Exhibit "C" I don't believe "repair" was on it at the time I signed it. There was nothing else on it. It was a blank. My name and address was on it. I do not recall whether the model number was on it or not. I do not believe it was. There was my telephone number, the date, my address and name. It was written by the man I talked to, not the Defendant.



[Testimony of B. M. Johnson-Charles M. Barrett.]

Cross Examination

By Mr. Myers:

I am not positive that the word "repair" was not on there but I do not recall it being there and that is as far as I intend to go. I looked at the slip before I signed it and that is the reason I do not recall it being there. I have a faint recollection of remembering that it was blank and wondering why he did not put "replace tube". I said nothing to him about it and just signed a blank order.

Thereupon

CHARLES M. BARRETT

was called and sworn as a witness on behalf of the Plaintiff and testified as follows:

Direct Examination

By Mr. Tolin:

I am a radio technician of over twenty years experience. During March, 1943, I was employed at the Leo J. Meyberg Company. During that month Mr. Lorenson who testified this morning brought a R. C. A. built-in [10] table model radio to our service department. I made a complete and thorough check of the condition of all of the component parts of the radio; the tubes, its alignment and its ability to play completely across the dial. Other than a noisy volume control the set was in good condition. The parts in the radio were marked by Captain Lorenson in my presence. The radio was filthy in-

[Testimony of Charles M. Barrett.]

side. I intentionally burned out an 80-rectifier tube, that was all, and replaced it in the set, put it back in the cabinet and returned it to Captain Lorensen. About two weeks later the set was brought back by Captain Lorensen to me at the Meyberg Co. At that time I observed that the rectifier tube I had blown out had been replaced and another tube, I believe a 6A7 converter tube, was put in. Other than that, to the best of my knowledge there was nothing else done to it. The volume control was in the same condition as before and the set had not been cleaned at all. No parts had been removed.

#### Cross Examination

By Mr. Myers:

I was not asked to destroy a rectifier tube. It was left to my judgment to make the set inoperative. So far as the tubes were concerned that was the most effective way to make it inoperative. To a radio technician a blown-out rectifier tube can signify many things; they are the following: It could be a shorted power transformer in your transformer set, a shorted filter, filter condenser, the speaker field coil shorted out, the frame, on rare occasions, shorted bypass condenser and also possibly a shorted tube. It might mean any one of these things. Any tube was scarce and hard to get in March 1943. If a radio set were brought to me for repairs which had blown out a rectifier tube, I definitely would not replace the rectifier tube without checking the set. If a new tube were put in and the power turned on and there was a short in the set one of two things would happen. Either the plates on the rectified tube would turn red or there would be a blue glow around the filament. If you turned it off im-



[Testimony of Charles M. Barrett.]

mediately it would not destroy the efficiency of the tube but you are taking chances. It might blow out instantly. If the set were brought in to me in that condition I would not check all of the [11] things I have mentioned as possible contributing causes. I would check the power transformer, the filter and the condenser. You check all of these things in one or two operations. One check covers all of these component parts. I was connected with a large wholesale house at the time and we had the most modern testing equipment. The small shops did not have this equipment. Without that modern up-to-date equipment they could make that one test. I am positive of that. The type of equipment that would make that test is an ohmmeter. This set is approximately six years old. I do not know how old the tubes were. When the set came back to me I found that no parts had been removed except the two tubes which had been replaced with new tubes. When I destroyed the rectifier tube and returned it back to Mr. Lorensen the set would not play.

The Court:

Would you due to the shortage of tubes, if there were a tube still in the set that enabled the set to work, would you replace it?

Answer: If the set would work I would call the customer's attention to it, certainly that there was a weak tube, but I would advise that they continue using it as long as they could.

By Mr. Myers:

The other tube which was replaced was a 6A7 a. It could have been a 6D6. There is a 6 D 6 tube used in that set. It is an intermediate frequency tube. There

[Testimony of Charles M. Barrett-Walter Kramer.]  
are two places on a tube of that type that could short-circuit. The tube may be partially short-circuited and still play. If a radio set were brought in to me and I was asked to put it in first class condition and I found two shorted circuits on the 6D6 tube I would have to replace it to put it in first class shape, but you could get some reception out of the set with that short circuit.

Thereupon

#### WALTER KRAMER

called as a witness by and on behalf of the plaintiff having been first duly [12] sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Tolin:

I am manager of an electrical and radio store located at 1355 South Flower. I have been in business there around twenty years and during that time have done quite a bit of repair work with respect to radios. During March of this year our repair work ran to a dozen sets a day. I am not sure of the name Lorensen, but I did receive a radio set during the latter part of March, this year. I think from that gentleman that was on the stand. I did receive a Zenith set. When that set was brought into me it was set up and we started to play it. It seemed O. K. I gave it back to Mr. Lorensen. It was playing all right. Before he left he asked for a burned out tube for it.

#### Cross Examination

By Mr. Myers:

When the set was brought in to my place I hooked it up and it played all right. That is the only checking I

[Testimony of Walter Kramer-Mrs. Charles A. Leake.]  
did. Then I was asked for a defective tube. I wouldn't want to say whether Mr. Lorensen specified the type of tube he wanted. When I gave him the defective tube I took out the good one it was to replace. I put the defective tube in the set and by putting the defective tube in the set it wouldn't play. The name of that particular tube is 117 Z 6. I have been a radio technician about twenty years. A blown out or defective rectifier tube in a set indicates to me as a radio technician, in most cases a shorted filter condenser, a by-pass condenser would cause that. As to whether any other shorts would cause it, my answer is no, except the tube itself, a defective tube. If it was a short, as indicated by the blown out tube, and you put another tube in there and turned the set on it would blow it out. As to my opinion as a radio technician as to [13] whether it would be proper practice for a radio repairman to put a new rectifier tube in a set of that kind without first checking it entirely, my answer is I think it would be up to the customer. I think a survey should be made to make sure that the parts are not defective. If that was not asked for, in other words, if he asked for a tube or to replace a tube we would replace the tube and the responsibility would be on the customer. [14]

MRS. CHARLES A. LEAKE

called as a witness by and on behalf of the plaintiff having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Tolin:

I know Mr. Pearson. Some time this year my son and I took our radio into his shop. I asked him how much

Testimony of Mrs. Charles A. Leake.]

it would cost to eliminate a slight smoking of the radio. When we got to his shop we did not talk to Mr. Pearson, we talked to a young man. Afterwards I talked with Mr. Pearson on the telephone. It was several days later. I called him and I asked him what the charges would be for fixing the radio up. He asked me what the complaint was. I told him that I had explained all that to the young man I talked to when we took the radio in. I told him the radio was playing perfectly when we took it in, but after it played an your or two it would smoke a bit and there would be a slight odor. I wanted to know what would have to be done to it to eliminate that trouble and I believe he said he would check it again. At the next conversation I had with him he told me it would cost \$6.00 and some cents to put in a new tube, or two; I don't know how many. There was something to be done, and a filter. There were three different things he suggested to me for consideration. The total of that was about \$6.75 or something like that. The radio was a Packard-Bell table model. I did not tell him to do the work. I told him not to do anything about it, that the price was a little bit more than I had expected to pay to have the radio fixed and not to do anything more about it, that I would talk to my housband about it and let him know. [15] I talked to my husband about it then later I called him up and told him that I did not want that work done, that we would pick it up. I remember the price he quoted. It was around \$6.00 for those three things, that was what he wanted to do the particular work that I spoke of at that time. When I went to get the radio he said that looking it over again he had found that I needed a new transformer. He said he would

Testimony of Mrs. Charles A. Leake.]

charge \$14.00 to put in a new transformer. I said we couldn't consider spending so much on a small radio that we would pick it up the first time we had the car. The \$14.00 was just for the transformer. I did not have the car with me that day and did not pick up the radio that day. Afterwards I went for it. He told me there was some service charge for inspecting it. I asked him how much it was and he said that up to that time it was \$3.50. I told him I thought that was an outrageous price for inspecting the radio and I would not pay it. He would not let me take the radio so I left it and then I went back again and tried to get my radio. Then he said the service charge was \$6.50. I told him I would sue him before I would pay it. I finally paid it because the O. P. A. told me I had to pay it to get my radio out. Nothing was done to it at all, except it played when I took it in and it did not play when I took it out. I asked him to explain to me the difference between the first service charge of \$3.50 and the final service charge of \$6.50. I asked him why it had come up to \$6.50. He said that was the bill, take it or leave it. I recognize the paper as this bill. The document was marked Government's Exhibit No. 11, for identification. [16]

### Cross Examination

By Mr. Myers:

I own a Packard-Bell table model radio. I have had it five or six years. It played perfectly. There was a slight odor that came from it, like burning rubber, after I played it a while. I wanted that corrected and took it to Mr. Pearson's radio shop. I saw Mr. Pearson there when I took it in but did not talk to him then. I did

Testimony of Mrs. Charles A. Leake.]

not leave the set there to be repaired. I didn't want that condition corrected until I knew what it was going to cost. I said for him to call me three or four days. They were to call me and let me know then. Then I called him. He told me that these three different things would put the set in better condition. I asked him if that would do away with the smoking, and he said yes. I told him that was more than we really wanted to spend on the little radio and not to do anything to it until I talked to my husband about it. Mr. Pearson did not say to me that it was a rather puzzling condition, that he had found in this radio. He didn't tell me that it was a rather perplexing problem to him. He didn't tell me that he spent some time working with the set to ascertain just what was the cause of that condition. He told me that he had rechecked it and in spite of the fact that I had told him that I did not want to spend around \$6.00 he rechecked it and found that what I needed was a new transformer. I did not tell him that I was willing to spend \$6.00 on the set and did not want it to run any more than that. The original estimate that he gave me for the three things he suggested ran to around \$6.00. It seems to me it was a little bit more; some odd cents. \$6.00 and some odd cents. [17] \$14.00 had nothing to do with the original estimate. Later he mentioned \$14.00. At first he said \$6.00 and some odd cents would eliminate the trouble. Then later he told me that it needed a new transformer. I don't remember that he said that the burning or smoking was caused by a condenser. He said that to eliminate that it would increase the amount of the bill over the original estimate. When I got the radio he gave me this bill which I recognize as Governments



Testimony of Mrs. Charles A. Leake.]

Exhibit No. 11, for identification. Tr. Vol. 1, 104-129. He wrote all this matter that is in purple ink that is on Government's Exhibit No. 11 at the time I got my bill. I did not have my glasses with me but he read it to me. He told me the tubes and pilots were old but that they were working all right. I paid Mr. Pearson \$6.50. I think he read me at that time the amount of time he had spent on the set as indicated on Government's Exhibit No. 11; 3 hours, 11 minutes.

By the Court: Let me see if I understand your testimony. Correct me if I am in error: The first time you took your radio down there you told him the trouble, as you have described here, with the radio, and he inspected the radio? A. Not then.

Q. But he told you there were three possible things wrong with it?

A. Yes, later on, when I called him up.

Q. You called and asked him for an estimate?

A. Yes.

Q. He told you it would cost you something over \$6.00? A. Yes [18]

Q. As I understand your testimony, you told him not to go ahead until you talked to your husband?

A. Yes.

Q. Did you ever thereafter tell him to go ahead?

A. No.

Q. Then you went down some other time and he told you it also needed a new transformer, and that transformer would cost you \$14.00? A. Yes.

Q. He told you there was a service charge of three dollars and something? A. Yes.

[Testimony of Mrs. Charles A. Leake-H. L. Burks.]

Q. Then you refused to pay it? A. Yes.

Q. Then afterward you went back again for it, and he said then that the service charge was six dollars and something? A. Yes.

Q. Thereafter you did pay him \$6.50?

A. After.

Q. You at no time then, as I understand it, told him to do any work on your radio?

A. Definitely no.

Q. By Mr. Myers: Did you indicate to Mr. Pearson at any time what amount you were willing to spend on the set? A. Never.

Mr. Myers: I think that is all." Tr. Vol. 1 116-118.

### H. L. BURKS

called as a witness by and on behalf of the plaintiff having been first duly sworn, was examined and testified as follows: [19]

#### Direct Examination

By Mr. Tolin:

I have been a radio technician for fourteen years and have been engaged in that work in and about Los Angeles for three years. It is ordinarily not necessary in replacing a rectifier tube to make a detailed check of the radio. I am familiar with the standard RMS service charge. As to the item of \$1.00 for tube inspection, that inspection includes an examination of the radio and tubes to the extent that the serviceman will be able to render a reasonably accurate estimate of the repairs.



[Testimony of H. L. Burks.]

Cross Examination

By Mr. Myers:

Certain types of rectifier tubes wear out with use and certain types do not. Type 117Z6 is a very short lived tube, and it does wear out with use. The filament often times blows out, and is very commonly spoken of as being blown out. The first cause of the blowing out of the rectifier tube is the number of times it has been turned on and off, the second cause would a shorted filter condenser. A short in other parts of the radio might cause that blowing out other than the filter. It would almost have to be a short circuit in the wire itself. Where you do not know the cause of the rectifier blowing out it is not customary to make a thorough check of the radio before putting one in. I don't do that. I don't disagree with Mr. Barrett who testified here yesterday. It may have been difficult for some of the trade to get rectifier tubes last December; we happened to have quite a large number. I do not know that there have been no new tubes made for some time. If it was a short in the condenser which had blown out the original rectifier tube if you put in a new recti- [20] fier tube and turn on the power it would blow that tube out if you were not watching the tube closely. The new tube may have to stay three minutes to blow. You are supposed to be watching the tube to see the condition of it and the rectifier tube could be subject to a short circuit and, the power supplied for short periods of time, without ruining it. I have seen 117 Z 6 rectifier tubes worn out from use only. I have seen some that were blown out by short circuit in the set. It takes 5 minutes to tell whether there is a

[Testimony of H. L. Burks.]

shortage in a condenser or in the power supply which caused a rectifier tube to blow out.

The Government did not introduce any evidence on Counts Two, Three, Seven and Eight and moved that they be dismissed, which Motion was granted.

The Court dismissed Count Nine of its own motion because of insufficiency of the evidence.

The Defendant was acquitted under Counts One, Four, Five, Ten and Eleven, and as said Counts charged sales of merchandise above ceiling prices and did not involve sales of services, the testimony pertinent to said counts is not here set forth.

#### MR. TOLIN.

The Government renews its motion to amend Count Six of the Information by deleting from the first line the word "October" and inserting in lieu thereof the word "March".

The Court: The Information is so amended by interlineation.

Mr. Myers: Exception please?

The Court: Exception noted. [21]

Plaintiff Rests.

Thereupon the Defendant Moved the Court for an Instructed Verdict of Acquittal of Count VI of the Information on the ground that the Plaintiff's evidence failed to prove the commission of a public offense or the commission of the offense charged in the Information. Said Motion Was Over-ruled, to which ruling the Defendant then and there excepted.

[Testimony of A. M. Pearson.]

Thereupon

A. M. PEARSON

was called as a witness on behalf of the Defendant, and testified as follows:

Direct Examination

By Mr. Myers:

I am the Defendant in this action. I operate a radio repair shop under the name of Sky Pilot Radio Company at 5120 West Adams Boulevard, Los Angeles, California. I have been in business at this general location for the past fifteen years. Prior to that time I was engaged in Electrical Construction Work for several large companies. I am married and have three children.

I did not take in the Johnson R. C. A. radio for repairs. It was taken in by my son who is now in Ireland. He is a radio technician of approximately ten years experience, and he is now employed as such. I did no work on the Johnson radio other than check his work and I watched what he was doing.

By the Court: If he was an experienced technician why did you watch him?

A. I am supposed to be the manager in the shop. I am supposed to see [22] everything.

By Mr. Myers:

I do not remember whether I delivered the set to Mr. Johnson. Since you hand me Plaintiff's Exhibit 8, I evidently did because Plaintiff's Exhibit 8 is in my hand writing. It is the bill I made out for the work done on the radio. I made it up from my son's time as he gave it to me. I have the original record turned in by my son for this job, which is in his writing. The pay roll

[Testimony of A. M. Pearson.]

sheet is made up from this record. There are other jobs on this paper. It shows continuous work. In the left hand column the job numbers are listed as they appear on our original tickets. No. 8553 is the Johnson job. From this record (witness reads from record) the time spent on the Johnson job was as follows:

April 2nd—from 2:10 p.m. to 3:00 p.m.—50 minutes

April 2nd       "   4:10 p.m. to 5:25 p.m.—1 Hr. 15  
Min.

or a total of two hours and five minutes. It was from this record that I made up the Johnson bill. All of this record is in my son's writing. Except the writing in purple ink. Mr. Myers, I will offer this. (Defendant's Exhibit G for Identification.)

The Court:

You have read the important part. Why encumber the record.

Mr. Myers: It is quite agreeable to me.

Witness Continues.

In addition to the work done, there were two new tubes supplied, a No. 80 tube at 70 cents and a 6D6 tube at \$1.00. Sales tax on the two tubes was 5 cents. The total labor charge was \$4.70, \$4.20 for my son and 50 cents figured for myself. I charged for fifteen minutes time that I put in checking the work, checking the statement, taking the merchandise out of stock, making the billing, and the actual contact with the customer when he took the radio, and delivering the radio to the customer. The price charged was the same as charged in March 1942 for similar time and service. The price charged for the [23] tubes was the same as charged in March 1942.

[Testimony of A. M. Pearson.]

By the Court: Do I understand, if I took my radio into your shop, and asked you to put in a tube, as Mr. Johnson testified, you can put in two tubes, and charge me four dollars and something for the time besides without any instructions from me?

By the Witness: We would only do what you instructed us to do; we wouldn't do anything different than we are instructed.

By the Court: If Mr. Johnson came in and instructed you to put in a tube, that is what you would do?

A. Not necessarily.

Q. If he told you the tube was out, and he wanted you to put it in?

A. If he said a rectifier tube I would refuse to handle the job unless he let us check over the set.

Q. Did you have authority from the customer first?

A. Yes, we had a signed order to repair the radio; not to put a tube in the radio; a signed order, in which the word "Repair" appears. We wouldn't ever just put an 80 tube, or rectifying tube, in that radio without checking it. It's not our policy, it never has been our policy, in March of last year, or any other time.

Witness Continues.

By Mr. Meyers: The writing on Plaintiff's Exhibit "C" is all in my son's handwriting except the signature and the number on the ticket. The word "Repair" is in my son's handwriting.

To me as a radio technician a blown-out rectifier tube indicates a short circuit somewhere in the set, and if a new tube were put in and the power turned on, it would immediately blow the tube out, if there was a short in

[Testimony of A. M. Pearson.]

the set. Tubes were short and hard to get in April 1943 and it was our policy when we had an order to "Repair" not to put in a new rectifier tube until the [24] set was checked to ascertain the cause of the blow-out. That would not apply to an amplifier tube.

I did not tell Mr. Johnson when I delivered the set that I had personally worked on the set and that I had worked on the set until 10 o'clock the previous night. I did say I had been working late—until 10 o'clock many nights to get out the work that had to be done. but I did not say I was working on his radio.

I did not take in the radio from Mrs. Leake, my daughter-in-law did. It first came to my attention May 5, 1943. At that time the set was in the store for a report, not for repairs. I did give that set a quick check over. My check did not reveal any mechanical difficulty. I did not talk with Mrs. Leake until five days later. That was a personal call on the 14th of May. She called at the store, I talked to her personally myself. I told her the first preliminary examination I made of the radio made me believe there was nothing wrong. I simply put a \$1.00 minimum charge on the set. I told her I had done so. Afterwards I talked to the party who took the radio in the shop. He assured me there was trouble in the radio and that I had better go through the set again because the customer said there was something wrong. When I first checked the set I had not been advised of the claimed trouble in the set. There did not appear to be any trouble with the radio. I simply had the order to report on the radio. When I talked with Mrs. Leake she insisted there was trouble with the radio. I went through the set very



[Testimony of A. M. Pearson.]

carefully and checked up on the tubes, condenser and other things. I reviewed with Mrs. Leake what I had done up to the time of the call. At that time she told me the set developed smoke after it had run two hours or more continuously. Up to that time I had not run the set two hours continuously and did not know that it did heat up after two hours' operation. She asked me to check further to see what caused the heat.

I made individual checks on the transformer; that is, I disconnected the leads from the rectifying tube, and made individual checks from plate to plate; also from plate to ground; one reading from the plate to the ground was 90 volts; the other reading from the plate to the ground was 120 volts. The [25] two readings should be identical. However, in reading we are allowed 20 per cent tolerance; the reading could be 20 per cent different, and not affect the operation of the set. This was slightly over 20 per cent, which would indicate trouble in the output; possible trouble but not necessarily, because I have handled lots which showed that much difference in the reading, and would play perfectly continuously over many hours of service, with no trouble. I made resistance readings from plate to plate; also voltage readings from plate to plate. Then I checked up on the load on the transformer; the current required of the tubes that were in the set; the current required had to be up to the voltage, and the individual current I figured out, as to what was necessary in the current consumption, and how many windings were in the transformer, and I found that the transformer had to have three secondary windings, one 5-volt winding, with

[Testimony of A. M. Pearson.]

2-amp. capacity, one 2-1/2 volt winding with 5/3/3-amp., and the high voltage.

I then told Mrs. Leake I could go ahead with the job, change the transformer, if she wanted me to. She asked me what it would cost. I told her I didn't know, that I would have to do the work and give her a bill for what was done, plus the time I worked on the radio, and the tube and labor might run as much as \$14.00. I told her the radio did not have that value because it had served its useful life, that she ought not put that much money into it. I made no repairs on that set, all I did was to check on the set.

The Court: I would like to ask him a question:

Q. You heard Mrs. *Leak* testify that she came in there and wanted her radio, and you said it would be three dollars and something, and she refused to pay it; did she ever ask for the radio?

A. No, sir, she did not ask for the radio. She particularly asked me to keep it and do more work on the radio at that time.

Q. Her testimony was to the effect that she came in for the radio, and asked for it, and you made the statement that it would be three dollars. Is that true?

A. It is definitely not true. [26]

Q. Also that she came later and asked for it, and you said your bill was \$6.50. That is true, is it?

A. That is true, yes.

Referring to the Mary Galton, also known as Mary Hammond. job I recognize Defendant's Exhibit "B". It is the original order. I recall the transaction. When the radio was brought into my store Miss Galton said



[Testimony of A. M. Pearson.]

the radio needed repairs and was not playing, and wanted me to repair it. I asked her if there was any music coming from it. I asked her first what was her complaint on the radio. Why she wanted the radio repaired, was it in the set or was it a question of quality, or was it not playing. She said, "I do not know except that the radio is dead. I want the radio repaired." I made out the order and she signed it. Everything on the order was there when she signed it. After taking in the set I worked on it. I removed the *chasis* from the cabinet, checked the filter condenser and various working parts in the set. The only trouble I found in the set was the rectifying tube, it was out and defective. To me, as a radio technician, a blown out rectifier tube indicates some trouble in the set. Something breaking down under load which does not occur under no load. With the best testing equipment some times a part will test good under no load and you put a load on it and it will blow just as an inner tube will blow if you put too much air in it. I put a volt meter in and I put a tube in the set and watched the voltage up to what I considered normal. A blown out rectifier tube indicates almost positively a short circuit somewhere in the set. A tube of this type seldom wears out with age. If there is a short in the set and you put in a new tube without locating the short it could burn out \$6 or \$8 worth of tubes instantly. In order to ascertain the cause of a short the filter must be checked with a meter. The set must be worked over very thoroughly and carefully and if no trouble is found a check must be made of everything that is done and you must look over it again much more carefully and more diligently to see what is causing the trouble. Miss Galton

[Testimony of A. M. Pearson.]

did not tell me that it had a tube out. After examining the set carefully and finding nothing wrong other than the tube, I replaced the rectifier tube, connected a voltmeter, and warmed up the set and had an A. C. cord so that I could jerk it out instantly if the voltage went too high. As nothing happened [26A] I completed the job. The price of the rectifier tube was \$1.60 which is the same price in March, 1942. The remainder of the bill represented labor and tax, and possibly shop expense. The total time spent was two hours and twenty minutes, in broken periods of time. The total labor charged was \$4.80. Labor was charged at the same rate as we charged for similar services in March, 1942.

#### Cross Examination

By Mr. Tolin:

The work I did on the Johnson radio was to check the radio after my employee finished his work. I turned the radio on and listened to it; I checked to see that each station came in where it appears on the dial, and it brought in the different stations, I thought, with reasonable volume. That was my inspection, and I O. K.'d the job. Then I took the merchandise and checked to see that the merchandise was correct and that it was used in the radio. I checked that to see that it was exactly as stated by my employee. I put in fifteen minutes doing these things. This was included in my bill. The only thing other than time that was put in the radio were the two tubes.

Defendant Rests.

Thereupon

Defendant moved the Court for a directed verdict of acquittal on Count VI of the Information, on the grounds that the evidence failed to prove the commission of a public offense or the commission of the offense charged in Count VI of the Information.

Said Motion was overruled to which ruling the Defendant then and there excepted.

Thereupon

The Court instructed the Jury.

No exceptions were taken to the Court's instructions.

Thereupon

The Jury retired in charge of the Bailiff, who was sworn according to law. [27]

Thereafter

On November 18, 1943, the Jury returned a verdict of "Guilty" upon Count VI of the Information.

Thereupon

The Court set Monday, November 22, 1943, at 2:00 P.M. as the time for pronouncing judgment and sentence.

Thereafter

On November 22nd, 1943, and within three days from the entry of the verdict the Defendant filed a Motion for a New Trial in words and figures as follows:

Title of Court and Cause.

Now Comes the Defendant, A. M. Pearson, and moves the Court to set aside the verdict of the jury returned in

the above entitled action on November 18th, 1943, and to grant a new trial on Count VI of the Information on the following grounds, to-wit:

1. The verdict is contrary to law.

2. The evidence was insufficient to justify the verdict in that there was no substantial evidence to show that the Defendant did any work upon the radio of D. M. Johnson, or that he had any personal knowledge as to the amount of work which had been done upon it; that the Complainant Johnson testified that the radio was delivered to an employee who made out an order which Johnson signed and which is in evidence; the undisputed evidence of the Defendant was that he did no work upon the radio and made up a bill based upon time reports turned into him by the employee, which time was charged at rates listed with the Office of Price Administration.

3. Count VI of the Information does not state facts sufficient to constitute the crime charged.

4. Count VI of the Information does not charge a crime under the laws of the United States. [28]

5. The Court erred in refusing to direct a verdict of acquittal on Count VI at the conclusion of the Government's case to which refusal the Defendant excepted.

6. The Court erred in the instruction given to the jury after the jury had retired to deliberate upon the verdict and returned into Court and requested further instructions, to which the Defendant excepted.

7. The Court erred in referring to Defendant's requested Instruction Number 10.

Dated this 20th day of November, 1943.

LEE J. MYERS

Attorney for Defendant [29]

In the United States Circuit Court of Appeals  
for the Ninth Circuit

No. 10621

A. M. Pearson,

Appellant,

v.

United States of America,

Appellee.

STIPULATION.

Whereas, the Government's and the Defendant's exhibits in evidence in the above entitled action, which are on file in the office of the Clerk of the United States District Court, Southern District of California, Central Division, are in many instances very difficult, and in some cases impossible to reproduce either by typewriting or by *pringing*, and

Whereas, the exhibits contain matters which both parties desire the Court to see in their original form, and

Whereas, some of said exhibits contain notations in the handwriting of various persons which both parties believe should be certified directly to the United States Circuit Court of Appeals for the Ninth Circuit by the District Court for the purposes of this appeal, and

Whereas, both the appellant and appellee desire to avoid the expense of copying all of these bodily into the Bill of Exceptions, and the expense of printing thereof.

Now Therefore,

It Is Hereby Stipulated and Agreed by and between the appellant, A. M. Pearson, and the appellee, United States of America, by and through their respective attorneys, subject, nevertheless, to the approval of the United States Circuit Court of Appeals for the Ninth Circuit, as follows:

1. That each and all of the hereinafter mentioned and designated exhibits in evidence, which are herein referred to respectively by the numbers given them by the Clerk of said District Court at the time of the trial herein, may be deemed by reference to be incorporated in the Bill of Exceptions both [30] generally and respectively where and wherever references are made to them by such numbers in the body and context of said Bill of Exceptions to the same effect and purport as though each and all of said exhibits were fully set forth, word for word, figure for figure, and picture for picture in said Bill of Exceptions:

2. That the District Court may, after passing upon appellee's proposed amendments thereto, sign and settle said Bill of Exceptions, and may include therein a copy of this stipulation in lieu of including therein, either in substance or in full, copies of each and all of the hereinafter designated exhibits in evidence, and that thereupon, each of said exhibits shall be deemed to be included in said Bill of Exceptions to the same effect and purport as though such and all of said exhibits were fully set forth therein as aforesaid:

3. That the exhibits to be so included are as follows:

Government's Exhibit No. 1

"	"	"	2
"	"	"	3
"	"	"	4
"	"	"	5
"	"	"	6
"	"	"	7
"	"	"	8
"	"	"	10
"	"	"	11

Defendant's	Exhibit	No.	Allegation
"	"	"	B
"	"	"	C
"	"	"	D
"	"	"	F
"	"	"	H
"	"	"	I
"	"	"	J

4. That the United States District Court in and for the Southern District of California may make an order that all of the foregoing designated [31] exhibits be sent to the United States Circuit Court of Appeals for the Ninth Circuit, and for the safekeeping, transportation, and return thereof, at the cost of the appellant, to be paid to the Clerk of said District Court upon demand;

5. This stipulation in no wise constitutes a waiver of any objections and exceptions to the introduction of any exhibits by the District Court.

Dated: .....

CHARLES H. CARR

United States Attorney

JAMES M. CARTER

Asst. United States Attorney

ERNEST A. TOLIN

Asst. United States Attorney

Attorneys for Appellee

LEE J. MYERS

Attorney for Appellant

It is so ordered:

Judge of the United States Circuit Court of Appeals for  
the Ninth Circuit



Thereafter the following order was made by the United States District Court:

In the District Court of the United States in and  
for the Southern District of California  
Central Division [32]  
No. 16149

A. M. PEARSON,

Defendant & Appellant,

v.

UNITED STATES OF AMERICA,

Plaintiff & Appellee

### ORDER ON STIPULATION

Upon stipulation of the parties, which has been approved by the United States Circuit Court of Appeals for the Ninth Circuit, it is ordered that the Clerk of the Court transmit to the United States Circuit Court of Appeals for the Ninth Circuit, together with this Bill of Exceptions, the following Government's Exhibits and *Plaintiff's* Exhibits which are hereby incorporated into this Bill of Exceptions by this reference thereto. Said Exhibits are as follows:

Government's Exhibit No.	1
” ” ”	2
” ” ”	3
” ” ”	4
” ” ”	5
” ” ”	6
” ” ”	7
” ” ”	8
” ” ”	10
” ” ”	11



<i>Plaintiff's</i>	Exhibit	No.	A
"	"	"	B
"	"	"	C
"	"	"	D
"	"	"	F
"	"	"	H
"	"	"	I
"	"	"	J

Harrison

United States District Judge [33]

#### JUDGE'S CERTIFICATE.

The foregoing Bill of Exceptions, together with the Exhibits therein mentioned and made a part hereof by Stipulation, contains all the evidence adduced on the trial of this cause, and correctly shows the various proceedings during the trial, as well as subsequent thereto. The same being true and correct, it is accordingly settled and allowed as a true Bill of Exceptions in this cause.

Dated this 29th day of April, 1944.

Ben Harrison

Examined and approved as an accurate bill.

Ernest H. Tolin

Asst. U. S. Attorney

Lee J. Myers,

Atty for Defendant & Appellant

[Endorsed]: Filed May 1, 1944. [34]

[Endorsed]: No. 10621. United States Circuit Court of Appeals for the Ninth Circuit. A. M. Pearson, Appellant, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

Filed May 13, 1944.

PAUL P. O'BRIEN,  
Clerk of the United States Circuit Court of Appeals for  
the Ninth Circuit.

In the United States Circuit Court of Appeals  
for the Ninth Circuit

No. 10621

A. M. PEARSON,

Defendant and Appellant,

v.

UNITED STATES OF AMERICA,

Plaintiff and Appellee

STATEMENT OF THE POINTS UPON WHICH  
APPELLANT INTENDS TO RELY ON AP-  
PEAL, AND DESIGNATION OF THE PARTS  
OF THE RECORD WHICH APPELLANT  
THINKS NECESSARY FOR THE CONSID-  
ERATION OF SAID POINTS.

To the Honorable Justice Curtis D. Wilbur, and Asso-  
ciate Justices of the United States Circuit Court of  
Appeals for the Ninth Circuit:

Appellant respectfully states that the following are the  
Points upon which he intends to rely on Appeal, to-wit:

1. That Count VI of the Information upon which  
Appellant was convicted, does not state a public offense  
against the laws of the United States;

2. The verdict and finding of guilt on Count VI of  
the Information is contrary to law;

3. That the verdict and finding of guilt on Count VI of the Information is contrary to the evidence, and the evidence is insufficient to support the verdict;

4. The District Court erred in denying Appellant's Motion for a directed verdict of acquittal at the conclusion of the Government's case, and at the conclusion of all the evidence;

5. The District Court erred in overruling Appellant's Motion for a New Trial.

Appellant designates the following documents and parts of the Record which he thinks necessary for the consideration of the foregoing Points, on Appeal, to-wit:

1. Preamble and Count VI of the Information;
2. Record of Arraignment and Plea;
3. Verdict of the jury;
4. Motion for New Trial;
5. Ruling on Motion for New Trial;
6. Judgment and Sentence;
7. Notice of Appeal and Grounds of Appeal;
8. Supersedeas Bond and Order Approving same;
9. Order of the District Court extending Time within which to Settle Bill of Exceptions and to File Assignment of Errors;
10. Assignment of Errors;
11. Bill of Exceptions;
12. Plaintiff's Exhibits 1 and 8, and Defendant's Exhibit "C";

13. Statement of Points;
14. Designation of Documents and Proceedings upon which Appellant relies on Appeal;
15. Names and addresses of Attorneys.

Respectfully submitted,

Lee J. Myers

Attorney for Appellant.

### RECEIPT.

Received a copy of the foregoing Statement of Points and Designation of Documents and Proceedings upon which Appellant relies on Appeal.

Charles H. Carr,  
U. S. Atty.

CHARLES H. CARR,  
United States Attorney,

By Mary Wentworth

[Endorsed]: Filed Jun. 2, 1944. Paul P. O'Brien,  
clerk.

[Title of Circuit Court of Appeals and Cause.]

### STIPULATION.

Whereas, the Government's and the Defendant's exhibits in evidence in the above entitled action, which are on file in the office of the Clerk of the United States District Court, Southern District of California, Central Division, are in many instances very difficult, and in some cases impossible to reproduce either by typewriting or by printing, and

Whereas, the exhibits contain matters which both parties desire the Court to see in their original form, and

Whereas, some of said exhibits contain notations in the handwriting of various persons which both parties believe should be certified directly to the United States Circuit Court of Appeals for the Ninth Circuit by the District Court for the purposes of this appeal, and

Whereas, both the appellant and appellee desire to avoid the expense of copying all of these bodily into the Bill of Exceptions, and the expense of printing thereof.

Now Therefore,

It Is Hereby Stipulated and Agreed by and between the appellant, A. M. Pearson, and the appellee, United States of America, by and through their respective attorneys, subject, nevertheless, to the Approval of the United States Circuit Court of Appeals for the Ninth Circuit, as follows:

1. That each and all of the hereinafter mentioned and designated exhibits in evidence, which are herein referred to respectively by the numbers given them by the Clerk of said District Court at the time of the trial herein, may be deemed by reference to be incorporated in the Bill of Exceptions both generally and respectively where and wherever references are made to them by such numbers in the body and context of said Bill of Exceptions to the same effect and purport as though each and all of said exhibits were fully set forth, word for word, figure for figure, and picture for picture in said Bill of Exceptions;

2. That the District Court may, after passing upon appellee's proposed amendments thereto, sign and settle said Bill of Exceptions, and may include therein a copy of this stipulation in lieu of including therein, either in substance or in full, copies of each and all of the hereinafter designated exhibits in evidence, and that thereupon, each of said exhibits shall be deemed to be included in said Bill of Exceptions to the same effect and purport as though such and all of said exhibits were fully set forth therein as aforesaid:

3. That the exhibits to be so included are as follows:

Government's Exhibit No.	1
”	2
”	3

Government's Exhibit No. 4

”	”	”	5
”	”	”	6
”	”	”	7
”	”	”	8
”	”	”	10
”	”	”	11

Defendant's Exhibit No. A

”	”	”	B
”	”	”	C
”	”	”	D
”	”	”	F
”	”	”	H
”	”	”	I
”	”	”	J

4. That the United States District Court in and for the Southern District of California may make an order that all of the foregoing designated exhibits be sent to the United States Circuit Court of Appeals for the Ninth Circuit, and for the safekeeping, transportation, and return thereof, at the cost of the appellant, to be paid to the Clerk of said District Court upon demand:

5. This stipulation in no wise constitutes a waiver of any objections and exceptions to the introduction of any exhibits by the District Court.



Dated: April 29, 1944.

CHARLES H. CARR  
United States Attorney

JAMES M. CARTER  
Assistant United States Attorney

Ernest A. Tolin  
ERNEST A. TOLIN  
Assistant United States Attorney  
Attorneys for Appellee

Lee J. Myers  
LEE J. MYERS  
Attorney for Appellant

It Is So Ordered:

Albert Lee Stephens C J.

.....  
.....  
.....

[Endorsed]: Filed May 5, 1944. Paul P. O'Brien,  
clerk.

